



# STATE OF CONNECTICUT

OFFICE OF PROTECTION AND ADVOCACY FOR  
PERSONS WITH DISABILITIES  
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## Testimony of the Office of Protection and Advocacy for Persons with Disabilities Before the Education Committee

Presented by: James D. McGaughey  
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Good morning and thank you for this opportunity to comment on **SB # 1038, An Act Concerning Individual Education Programs**. Each year, advocates in our Office handle hundreds of requests for assistance from parents of special education students. In many cases the problems these students are confronting can be traced to the fact that the educational plan for the child is not based on his or her individual identity and needs – meaning that the process has gone awry somewhere along the way. Our Office supports the statutory changes proposed in this bill because we believe they will help correct such problems. However, we also believe that further steps should be taken.

A student is found to be eligible for special education and related services precisely because a determination has been made that, due to a particular disability that affects his or her learning, that student needs an individual approach. The written Individual Education Plan – the IEP – which describes, in some detail, the educational approach to be taken for that child is supposed to be developed by a Planning and Placement Team (PPT) that includes teachers and other professionals, and the student's parents, and the student himself or herself if old enough to participate. The IEP developed by the PPT is supposed to be based on appropriate assessments and should contain thoughtfully developed goals, strategies and useful measures that are all relevant to the individual student's identity and needs.

Too often, however, the contours of the IEPs contain only generic descriptions of program content. Indeed, it is not unusual to find nearly identical verbiage in IEPs for a number of students in a particular program. Under such circumstances, the PPT/IEP development process devolves into a meaningless paper exercise – one that may "cover" the school in the event of scrutiny, but adds little to, and, in fact, may interfere with understanding of the individual student's educational needs. Sometimes, too, key decisions about program content and student placements are made outside of the team process by administrators who are more informed about available resources and budgetary constraints than about the identity and needs of a particular student. I have had retired teachers tell me that they were sometimes briefed by supervisors prior to PPT meetings regarding administrative decisions that had been made about a particular student, and that they were explicitly told not to speak about certain options, especially if there was no funding in the budget for those options. That is not how things are supposed to go. Under such circumstances the PPT meeting becomes little more than an orchestrated sales

meeting at which the school district's professional meeting-goers try to convince the parents that their pre-determined plan is actually being developed at the meeting, with the parents' input, and that it is going to be wonderful.

The bill would require that parents be offered an opportunity to meet and review assessment results prior to PPT meetings. It would also establish requirements for training teachers on IEP development. These requirements should prove helpful in addressing some aspects of the problems noted above. The less overwhelmed parents are with evaluation results and professional jargon, the more effectively they can contribute. Similarly, the more teachers and other educators understand the values and principles that contribute to good individualized education planning, the less likely we are to see IEPs that look like they were photocopied from some master plan. Participating in the kind of interactive, interdisciplinary group process that goes into developing a good IEP requires skills – skills that can be learned. So, if it is approached with openness and some sophistication, the requirements contained in this bill could lead to meaningful, positive change in PPT/IEP practices.

However, I doubt that simply affording parents pre-meetings or establishing training requirements for educators can fix those aspects of the problem that are rooted in administrative culture. From the perspective of special education advocates, one of the most aggravating aspects of the investigation and complaint resolution processes available from State and federal oversight agencies is their unwillingness to question or re-examine the substantive decisions reflected in an IEP. The presumption, which has been fairly well established in law, is that if the PPT was legally constituted, and if the procedural requirements for IEP development were observed, then the content of the IEP produced by that PPT are not subject to external review. While the original rationale for this – that the local team best knows the child's needs – may have validity, it ignores the real world impact of fiscal pressures, organizational politics and administrative culture on team behavior. And, over the years, it has also led to practices that yield "bullet-proof" IEPs – documents that are carefully crafted to give investigating agencies little grounds to find non-compliance with various other legal requirements.

In short, there is a marked lack of accountability for the content and quality of the most fundamental document in the entire enterprise of special education – the IEP. Unless some way is found to get oversight agencies to look at the essential questions of whether an IEP reflects both a genuine understanding of the student as an individual and an equally genuine commitment to pursue the best practices available to educate that student, I believe we will all continue to experience frustration. If this bill moves forward, I would suggest adding some provision for periodic, rigorous qualitative assessment of the contents of IEPs selected from a representative sample of school districts across the State. Such an assessment process would focus attention on substantive questions regarding how well individual student's needs are being understood, and

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whether the goals, objectives, measures and placement descriptions reflect that understanding with sufficiently clarity and precision to be used as a reliable blueprint for learning.

I would also ask that you consider adding provisions to the bill which would ban the use of planned seclusion as a component of a student's IEP, and require the Department of Education to compile and publish an annual report on the frequency with which Connecticut schools are using restraint or seclusion. As you may recall, legislation originally raised in this Committee passed in 2007, banning the use of restraints in all but emergency situations. Public Act 07-147 extended to all public schools a prohibition that has been on the books, and which has applied to segregated special education schools, since 1999. But there are two problems: 1) the current statute still permits IEPs to be written calling for the planned use of "seclusion" – a practice which most experts agree has no educational value and which often leads directly to the need to use physical restraint on students in order to force them into seclusion rooms; and, 2) no one is monitoring the use of these practices to see whether the law is being observed.

Alarm over this situation was raised by a recent news report in C-HIT, an on-line news service. The reporter used the Freedom of Information Act to obtain restraint and seclusion data required by law to be reported to SDE. According to the article, Connecticut schools reported over 18,000 instances of emergency use of restraint and seclusion last year. That is an astounding number. Again, according to the article, the SDE indicated that the data was "preliminary and unaudited". Nonetheless, these are huge numbers for a state our size, and the fact that the data quoted indicates that statutory parental notification requirements are being observed less than 50% of the time by regional education service centers, and only 85% of the time by public schools argues for much more effective monitoring. So, if you move forward with this bill, I would urge you to include a provision requiring banning the planned use of seclusion as part of a student's IEP, and calling on SDE to actively monitor and report on the frequency with which restraint and seclusion are being used as emergency interventions.

Thank you for your attention. If there are any questions, I will try to answer them.



# Use Of Student Restraints, Seclusions Tops 18,000

by Colleen Shaddox | Dec 6, 2010 9:55 am

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COLLEEN SHADDOX PHOTO

Gloria Bass (left) and Maryann Lombardi advocated for laws limiting restraints and seclusion in schools. Here Lombardi

holds a platter made in her son's special education class for a PTA fundraiser.

Six-year-old Anthony Wickham weighed about 48 pounds when five adults forcibly restrained him at Plainfield's Shepherd Elementary School. Anthony, a student in the school's Clinical Day Treatment program, was regularly locked in a windowless room that measured four by six feet, a court document says.

The allegations sound highly unusual, but Connecticut schools reported using emergency restraint and seclusion more than 18,000 times last year.

C-HIT received the data from the state Department of Education after making a request under the Freedom of Information Act.

"This is really pretty disturbing," said Alicia Woodsby, public policy director for the National Alliance for Mental Illness in Connecticut. The number of incidents far exceeds what her organization suspected and "illustrates why we need transparency on this and better reporting of it," she said.

The state Department of Education cautions that these numbers are preliminary and unaudited. In only one other state, California, are schools required by law to report these incidents to the state. California schools reported about 21,000 "behavioral emergencies" in the same time period in public and non-public schools. California's K-12 public school population was 6,252,011 in 2009. Connecticut's was 563,869.

The Connecticut data comes from public schools, regional education service centers and approved private special education programs. Restraints accounted for 8,511 of the incidents, while 9,823 seclusions were reported. Schools were asked only to report "emergency seclusions." Connecticut law allows for non-emergency seclusions to be a planned behavioral intervention for special education students. Schools are only mandated to report restraints and seclusions of children with disabilities, but some included incidents involving children without disabilities as well.

The state defines restraint as "any mechanical or personal restriction that immobilizes or reduces the free movement of the child's arms, legs or head." Seclusion is "the confinement of a child in a room, whether alone or with staff supervision, in a manner that prevents the child from leaving."

Parents were notified of these incidents 85.1 percent of the time by public schools, though a 2007 state law requires they always be notified. Regional education service centers did notification 42.2 percent of the time. Notification data were not reported for the private special education programs. The data did not indicate if there were any injuries.

In hospitals and residential facilities, restraint and seclusion have been regulated at the federal and state level since the late nineties. There is currently no federal law restricting these practices in schools. Connecticut U.S. Sen. Christopher J. Dodd is co-sponsoring legislation that would place limits on restraints and seclusions in schools. The Keeping All Students Safe Act has passed the U.S. House of Representatives but is stalled in the Senate. Dodd is seeking a new sponsor to promote the bill after his retirement. A report by the federal General Accounting Office found instances across the country of students being handcuffed, duct taped and even suffocated during restraints.

The Connecticut Office of Protection and Advocacy for Persons with Disabilities receives reports of cases of serious injury resulting from restraint or seclusion. Since 2001, the agency has gotten 27 such reports. All were from special

education facilities, most of which contract with local school districts. Unless there are allegations of abuse, the office has limited authority to investigate, said James McGaughey, executive director of the OPAPD. His staff is assisting several students and their families to file complaints with the U.S. Department of Education's Office of Civil Rights.

### **Schools Ill Prepared**

The issue is part of a larger problem of schools being ill prepared to serve children with special needs, according to McGaughey. Teachers, with inadequate training in behavioral supports, say: "I don't know what else to do. This is all I can figure out," he said.

But there are ways to cope with a range of behaviors, particularly if the individual needs of a child have been thoroughly and professionally evaluated, added Bruce Garrison, assistant director for protection and advocacy for persons with mental illness at OPAPD. "When a student gets to that point [of being restrained or secluded] there's that long history of what we could have done before that happened," he said. "Physical wounding, that's one aspect, but there's an emotional wounding as well."

"We have a lot of information that they're harmful," Denise Stile Marshall said of restraints and seclusions. Marshall is executive director of The Council of Parent Attorneys and Advocates. She added that there is no research that shows any educational or therapeutic benefit from these practices. Her group did a national report in 2009, *Unsafe in the Schoolhouse*, that solicited incident reports from parents. Stories from Connecticut parents included:

*An 8 year old with Asperger's Syndrome ran away from a paraprofessional who grabbed him by the shoulder after she created a power struggle over a ball with him ... The child was then restrained by three adult staff who threw him to the ground.*

*A 5-year-old little girl, nonverbal, came home from school with a softball-sized bruise on her back. She had been locked in a small bathroom, seated on a potty seat. She obviously had rocked back and forth, hitting her back on a small round knob on the back of the potty seat.*

Gloria Bass has two grandsons who were secluded in Wilton public schools. "If you did it as a parent, you could be arrested," said Bass, who is raising her twin grandsons, both of whom have autism and multiple other disabilities. She's succeeded in getting them placed in a school for special needs children, where she said they are thriving.

Together with several other Wilton parents, including Maryann Lombardi, she campaigned for the current Connecticut state law on seclusion and restraint. Many parents around Connecticut are not even aware that schools have seclusion rooms, often little more than converted closets, according to Lombardi. "It's not like they are going to wave a banner over it on open house night," she said. Her son, Gianni, who has autism, does not speak and she only learned that he was regularly placed in seclusion after another parent informed her.

Anthony Wickham, the Plainfield boy whose family is suing the school district, has since been moved to another school. "Things improved tremendously for him," said his lawyer, George Schober. Plainfield's superintendent of schools Edward Malvey did not respond to requests to comment.

Lombardi's son is about to age out of a residential program. She's hoping he can move into a house near her and make a living running errands for elderly neighbors. Lombardi worked in her husband's pizza restaurants before her battle with the school system. Bass described herself as a "stay-at-home mom" at the time. Today each woman works in disability advocacy. Both have given a lot of thought to why restraint and seclusion happen. They each site a lack of training for teachers and resistance to call in consultants to guide the plan for a special needs child.

"It's a lack of understanding fundamentally of who the child is and how to deal with the behavior," said Lombardi.

"They have feelings," Bass said over and over in the course of the interview. "I don't know why people don't get that."

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